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**Saint-Gobain Industrial Ceramics, Inc., a subsidiary of The Norton Company and United Steelworkers of America, Local Union 9436, AFL-CIO, CLC. Case 3-CA-22879-2**

July 3, 2001

**DECISION AND ORDER**

**BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN  
AND TRUESDALE**

Pursuant to a charge filed on February 16, 2001, the Acting General Counsel of the National Labor Relations Board issued a complaint on February 28, 2001, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 3-RC-11014. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with defenses, and an amendment to answer, admitting in part and denying in part the allegations in the complaint.

On May 24, 2001, the Acting General Counsel filed a Motion for Summary Judgment. On May 25, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of its objection in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation with an office and place of business in Niagara Falls, New York, has been engaged in the manufacture of industrial ceramics.

Annually, the Respondent, in conducting its business operations described above, purchases and receives at its Niagara Falls, New York facility goods and services valued in excess of \$50,000 directly from points outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We also find that United Steelworkers of America, AFL-CIO, CLC (the International Union) and United Steelworkers of America, Local Union 9436, AFL-CIO, CLC (the Local Union) are labor organizations within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

*A. The Certification*

Following the election held August 23, 2000, the International Union was certified on October 25, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees and laboratory technicians employed by the Employer at its 6600 Walmore Road, Niagara Falls, New York facility; but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

Since on about October 25, 2000, the International Union has designated the Local Union, a constituent of the International Union, to represent the above unit for purposes of collective bargaining. The Local Union, acting on behalf of the International Union, continues to be the exclusive representative under Section 9(a) of the Act.

*B. Refusal to Bargain*

On or about December 4, 2000, the Local Union, by letter, requested that the Respondent meet with it for the purpose of negotiating a collective-bargaining agreement.<sup>1</sup> The Respondent admits that since on or about

<sup>1</sup> The complaint alleges that the Local Union made an initial bargaining request, by letter, on about October 25, 2000. The Respondent denies that the Union requested bargaining on October 25, 2000, but admits that the Union made a bargaining request by letter dated December 4, 2000, and that it has failed and refused to recognize and bargain with the Union since that date. In light of these admissions, we find that the Respondent's denial of the allegation concerning an October 25, 2000 bargaining demand does not preclude summary judgment nor does it raise a matter warranting a hearing.

December 4, 2000, it has refused to recognize and bargain with the Local Union as the exclusive collective-bargaining representative of the unit. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By failing and refusing on and after December 4, 2000, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Saint-Gobain Industrial Ceramics, Inc., a subsidiary of The Norton Company, Niagara Falls, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, Local Union 9436, AFL-CIO, CLC as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance employees and laboratory technicians employed by the Employer at its 6600 Walmore Road, Niagara Falls, New York facility; but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Niagara Falls, New York, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 4, 2000.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 3, 2001

Peter J. Hurtgen,	Chairman
Wilma B. Liebman,	Member
John C. Truesdale,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Steelworkers of America, Local Union 9436, AFL-CIO, CLC, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time production and maintenance employees and laboratory technicians employed by us at our 6600 Walmore Road, Niagara Falls, New York facility; but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

SAINT-GOBAIN INDUSTRIAL CERAMICS, INC., A  
SUBSIDIARY OF THE NORTON COMPANY